

**STATE OF WISCONSIN
DEPARTMENT OF COMMERCE**

**IN THE MATTER OF: The claim for
reimbursoment under the PECFA
rogram by**

MADISON HEARING OFFICE
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Gregory P. Sebranek
Kwik Trip, Inc.,
Po Box 2107
La Crosse, WI 54602-2107

Appellant,

vs.

PECFA CLAIM 54601-3576-30

Secretary, Wisconsin Department
of Commerce

Hearing Number: 96-252

Respondent.

FINAL DECISION

NOTICE OF RIGHTS

Attached are the Proposed Findings of Fact, Conclusions of Law, and order in the above-stated matter. This is a FINAL Decision.

Any party aggrieved by the decision must file a petition for Judicial review no more' than 30 days after the date of this hearing decision. The petition for Judicial review must be served on the Department of Commerce, office of the Secretary, 123 W. Washington Avenue, 9th floor, P.O. Box 7970, Madison, WI 53707-7970.

STATE HEARING EXAMINER:
Ronald I. Weisbrod

DATED AND MAILED:
March 11, 1998

MAILED TO:

Appellant Agent or Attorney
Gregory P. Sebranek
Kwik Trip, Inc.,
P.O. Box 2107
La Crosse, WI 54602-2107

Department of Commerce
Kristiane Randal
Assistant Legal Counsel
P.O. Box 7969
Madison, WI 53707-7969

FINDINGS OF FACT

On August 6, 1996, the Department of Commerce (department) issued a decision in the above captioned matter finding that \$30,679.19 of the amount submitted for reimbursement by the Petroleum Environmental Cleanup Fund was not eligible for reimbursement. The appellant's request for a hearing, dated August 7, 1996, was received by the department on August 12, 1996. William McCoshen, Secretary of the Department of Commerce, then delegated to the administrative law judge assigned to hear the appeal the authority to issued a final decision if the appeal was not heard because of withdrawal, default, settlement, untimeliness of the appeal, mootness of the appeal, lack of subject matter jurisdiction, or lack of standing to appeal.

By letter, received by the department on December 4, 1996, the appellant acknowledged that a portion of its appeal, totaling \$18,127.06, was for the disposal and hauling of contaminated soil from the site "prior to DNR notification."

On December 15, 1996, the department requested that this portion of the appellant's appeal, totaling \$18,127.06, be dismissed because those costs were not eligible for reimbursement since said costs were incurred prior to notification to the Department of Natural Resources. The appellant did not reply to or contest the department's motion to dismiss.

Section ILHR 47.53 (1) (b) 2 of the Wisconsin Administrative Code provides that appeals of items identified as ineligible, as listed in ILHR 47.30(2), shall not be allowed. Section ILHR 47.30(2)(a)4 excludes from costs eligible for reimbursement any costs, excluding an emergency action, incurred before a confirmed discharge was reported to the DNR.

CONCLUSIONS OF LAW

The appellant's costs totaling \$18,127.06, shall not be eligible for reimbursement because they were incurred prior to DNR notification of a confirmed discharge, within the meaning of ILHR 47.30(2) of the Wisconsin Administrative Code. The appellant has defaulted on that portion of its appeal.

DECISION

The department's motion to dismiss a portion of the appellant's request for reimbursement of costs, totalling \$18,127.06 is granted. The remainder of the costs appealed shall be scheduled for a hearing as soon as possible.

HEARING EXAMINER

by
Ronald I. Weisbrod
Administrative Law Judge